IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3495 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G R BHALKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3495 of 1988

MR KAREIL for MR BP TANNA for Petitioner No. 1

MR SP SEN, A.G.P. for Respondents No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/01/2002

ORAL JUDGEMENT

1. Heard learned Counsel Shri Kariel for Shri Tanna for the petitioner and shri SP Sen, learned A.G.P. for the respondents.

2. It is the case of the petitioner that he was working as Assistant Director, Civil Supplies (Class II) of the State Government. According to him he passed the Departmental Examination in September 1981 and immediately on passing the Departmental Examination he should have been promoted to the higher post by reverting him his junior who was promoted earlier to him in April, 1980. Before filing this petition in 1988 he go on writing letters by way of representation to the respondents - Authorities, but it fell on deaf ears of the respondents. He came to be promoted only on 23.1.1984 as Assistant Director. The last representation/letter addressed by him was of 30.8.1982, when he was given promotion on 23.1.1984 to the post of Assistant Director, therefore, he had filed this petition and prayed that he may be given deemed date of promotion i.e. 28.4.1980, the date on which his immediate junior was given promotion. From the petition it appears that the said petition was drafted and signed by learned Counsel Shri Tanna for the petitioner way back in July, 1984, but for the reasons best known this petition came to be filed in the office of this Court only on 7.7.1988 on an urgent note filed by the petitioner. On 8.7.1988 the learned Single Judge of this Court issued Rule and made it returnable on 12.12.1988, but no interim relief was granted. Thereafter, as stated earlier, the matter was adjourned from time to time and today it is listed for 15 times.

3. Learned A.G.P. Shri Sen for the respondents raised preliminary objections about the maintainability of this writ petition on the ground of gross delay. He submitted that according to the petition he passed the Departmental Examination in September 1981 and as per rules he was entitled for promotion by reverting one of his juniors who was promoted earlier to him in 1980, but except making representations, that too upto August, 1982, the petitioner did not do anything in the matter and it is only after he was promoted to the post of Assistant Director on 23.1.1984 he filed this petition only in 1988 though he has prepared it in 1984. This type of gross delay of several years cannot be condoned and therefore without going into the merits of the case this petition should be dismissed. However, learned Counsel Shri Kariel for the petitioner vehemently submitted that once this Court straightway admitted this petition then it is not open to the other side to contend that it should be dismissed on the ground of delay. He, therefore, submitted that the matter should be heard and decided on merit. It is true that this petition is

admitted and pending since last 14 years, but that itself would not be a ground for entertaining it on merit when it suffers from gross delay and latches. It may be stated that without issuing the notice to the other side the petition was straightway admitted. Therefore, at the earliest point of time, the respondent can take up this contention at the time of final hearing and that contention is raised today regarding delay. If this Court had issued the notice to the otherside and after hearing the respondent on the question of delay, if the petition later on admitted then perhaps there would have been different consideration. However, in the instant case the learned A.G.P. Shri Sen is fully justifying in raising the question regarding the gross delay. In the instant case as stated earlier the petitioner passed the examination in September, 1981 and he only pursued the remedy of representation that too upto August, 1982 and thereafter he did not do nothing, it is only after his promotion to the post of Assistant Director from 1984 he woke up from the slumber and decided to file this writ petition in July, 1984, but for the reasons best known it actually came to be filed only in July, 1988 i.e. after a period of 4 more years. Thus, such a gross delay in all 7 years cannot be condoned and only on this ground this petition is required to be dismissed.

4. In view of the above discussion this petition fails and dismissed with no order as to costs. Rule discharged.

sd/-

Date : January 11, 2002 (B.J.Shethna, J.)

sas